

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
WRIT PETITION NO.7117 OF 2004

Karbhari Dharma Tambe & Ors. .. Petitioners

Versus

Dy. Director, Rehabilitation
(Land) & Ors. .. Respondents

Mr. Ramesh Dubey Patil i/b M/s. Jay & Co. for the
petitioners

Mr. V.P. Malvankar, A.G.P. for the respondents

CORAM: A.P. SHAH &
S.U. KAMDAR, JJ

DATED: 15TH SEPTEMBER, 2004

P.C.:

1. Heard advocates.

2. This Writ Petition is filed by the Petitioners whose land is sought to be acquired for rehabilitation of persons displaced by the Pimpalgaon Joga Project. The Petitioners hold agricultural land measuring 5 Hectares and 3 Ares at Village Tambe Wadi, Taluka Junnar, District

Pune. This land was originally held in the name of Dharma Krushna who died on 22nd September 1996 leaving behind three sons, three daughters and the widow. The widow died sometime in 2003. The present petition is filed by the three sons of Dharma Krushna.

3. The principle submission of the learned counsel for the Petitioners is that all the six legal heirs of late Dharma Krushna have equal undivided 1/6th share in the properties and if the undivided share of each co-sharer is considered the total holding is far below the minimum of 3 hectares and 23 ares and therefore no land is liable to be acquired. The learned counsel placed heavy reliance on a decision of Saldanha, J in the case of Shri Vijay Anand Kshirsagar vs. State of Maharashtra (1994(4) Bom.C. R.38). In that case, Saldanha, J took a view that family as we find in section 2(9) of the Maharashtra Resettlement of Project Displaced Persons Act, 1976 means "immediate family of 'person' and not the "undivided Hindu Family". The learned Judge observed in para 7 as follows:

"7. On a consideration of the arguments advanced by learned Counsel on both sides, the short question that requires to be resolved is as to whether the appellant is justified in his demand that the term "person" as it appears in section 2(10) would entitle him to contend that he be treated as an individual co-parcener as distinct from the single unit of the Hindu Undivided Family. To my mind, the demand is justified because one has to take the over-all perspective of the circumstances in which this Act was promulgated for the purposes of ultimately interpreting its provisions and giving effect to the legislative intent. I have had occasion to observe earlier that the legislature intended most certainly to leave holdings upto 8 acres in tact. Put more simply, therefore, in the opinion of the Government having regard to the benefits of the project, the holding of 8 acres was considered to be more than adequate as a personal holding. Person in the social sense naturally meant the immediate family. Ancestral property or Hindu Undivided Family property naturally gets fragmented among different groups with each successive generations dependent on the number of sons, dependants etc. In a given instance, therefore, it may appear to be rather unreasonable to hold that several families who come within the umbrella of Hindu Undivided Family are to be treated as one Unit when on an actual evaluation it is found that each of them would in fact be holding less than 8 acres. The term "holding" therefore has to be construed not only literally but realistically if this is to be done then one will understand as to why the legislature used the expression "person" and deliberately avoided mentioning in this Act even though several other acts may do so, that the term "person" shall include the expression family. To my mind, this was not

accidental but it signified the legislative intent that each co-parcener which expression is more synonymous with the term person than the expression family, will have to be treated as a holder. it is not difficult to carve out the shares of a co-parcener by going through the simple exercise of a notional partition. In the case of large holdings, even a co-parcener may be found to be entitled to more than 8 acres of land in which case the provisions of the Act would come into operation. In this context, there is considerable significance in the arguments advanced by Mr.Anturkar, that the legislature has in the very preceding definition dealt with the term and expression "family", but has refrained from carrying over that term while defining the term "holding". Viewed at from any angle to my mind the contention on behalf of the appellant deserves to be upheld."

4. Relying upon the above observations, the learned counsel for the petitioners contended that having regard to the fact that each of the co-sharer has a holding below the prescribed minimum the acquisition of an area of 1 Hectare 20 Ares is bad in law and liable to be quashed. We are unable to accept the submission of the learned counsel for the petitioner. In Shivgonda Balgonda Patil v. Director of Resettlement reported in 1992(1)Bom.C.R. 177 a Division Bench of this Court has considered this very issue in the light of the

provisions of Maharashtra Resettlement of Project Displaced Persons Act, 1976 and Smt.Sujata Manohar J., as she then was, speaking for the Bench observed as follows:

"It is further submitted by the petitioners that in view of the provisions of the Hindu Succession Act, 1956 there was an automatic partition amongst the heirs of Balgonda Patil on his death. Hence, each of the petitioners must be considered as having a separate holding. Balgonda Patil was the father of the 1st petitioner and grand-father of petitioners nos.2, 3 and 4 who are the sons of Ramgonda Patil. Ramgonda Patil was the brother of Shivgonda Patil, the 1st Petitioner and the son of Balgonda Patil. Ramgonda Patil has died and hence the names of petitioners nos.2, 3 and 4 are entered in the khata after the death of Ramgonda Patil. It is well settled that on the death of a male hindu who is a co-parcener in a joint family there is no automatic partition of his share in the doing family properties amongst his male heirs. But if the deceased has left him surviving a female heir as specified in section 6, a notional partition is deemed to have taken place in the joint family property at the time of the death of the deceased for the purpose of ascertaining the share of the deceased in the joint family properties which comes to the share of the female heirs. In the case of (State of Maharashtra v. Narayan Rao Sham Rao Deshmukh), reported in A.I.R. 1985 S.C. 716, the Supreme Court considered this question in the context of Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. It held that in the case of a joint family consisting of karta, son, wife and mother, on the death of the karta the surviving members continued to

remain joint. Hence, all members together are entitled to one ceiling unit. The Supreme Court negatived the contention that by reason of the death of the karta there was an automatic partition amongst the members of the joint family. The Supreme Court has held that only the share of the female members in the family properties becomes fixed on the date of death in such circumstances. But there is no partition of the joint family. The contention of the petitioners, therefore, that there was an automatic partition amongst the heirs of Balgonda Patil on his death must be negatived."

5. Thus, the plea of notional or automatic partition on the death of Karta was expressly rejected by the Division Bench. We may also mention that in the case of Ganpat Balwant Pawar and others v. Special Land Acquisition Officer No.7 reported in 1984 Mh.L.J. 752 in almost identical circumstances, the Full Bench of this court negatived the contention of the petitioners therein that there was a partition between the members of the joint family and that each person must be considered as having a separate holding for the purpose of Maharashtra Resettlement of Project Displaced persons Act, 1976. The Full Bench pointed out that there is only one single Khata (account) of all the petitioners together, though

against the name of each petitioner it is mentioned that he is holding one-fourth share in the lands. The situation is identical in the present case that after the death of Dharma Krushna Tambe the land was shown in the name of 6 heirs of the deceased. It is not even the case of the Petitioners that there was partition in the family. On the other hand it is categorically stated in para 2 of the petition that the land in question is Hindu Undivided Family land. It appears that the aforesaid decisions of the Division bench and the Full Bench were not brought to the notice of the learned single Judge. The decision of Saldanha, J. in Vijay Anandrao Kshirsagar vs. State of Maharashtra is clearly per incuriam and is hereby overruled. Petition is accordingly dismissed.